

Mill Roseman for Philip Morris 3/16/83  
Draft of letter on Waxman bill -- Legal executive

Dear \_\_\_\_\_:

A proposed piece of legislation, H.R. 1824, introduced by Representative Waxman, has been offered to the Congress.

Alleging concern for the purported health effects of cigarette smoking, this bill would impose such onerous and inequitable burdens on the American tobacco industry, and on the consumer of tobacco products, that it actually constitutes a program of prohibition, rather than education.

There are legal implications in this approach which, as an attorney, I find particularly ill-advised.

It would place the Congress in the position of establishing, by legislative fiat, a set of conclusions which are the subject of continuing debate by medical and scientific authorities.

It would transfer to the Department of Health and Human Resources the regulatory authority currently resident in the Department of Commerce and the Federal Trade Commission. Under current law, cigarette labeling and advertising are matters decided upon by the industry in conjunction with those appropriate bodies, and subject to Court determination of Congressional intent, a procedure consonant with the American legal and constitutional system. Mr. Waxman's bill would substitute the unconstrained authority of yet another regulatory body.

Further, the bill would empower that body to govern cigarette advertising, authority which the Congress has until now wisely withheld even from the Federal Trade Commission. The precedent created by this action would endanger the First Amendment right of commercial speech, directly contradicting the finding of the Supreme Court in *Central Hudson Gas* (100 S. Ct. 2343 (1980)), and many other related cases. Constitutionality, then, is a major issue.

On legal grounds alone, therefore, I believe any responsible student of American law and legislation would find this proposed legislation both inappropriate and potentially perilous.

I urge you to and your colleagues in the Congress to reject it.

Sincerely,

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